

PTO/SB/64 (10-05)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)
ACY33484-00

First named inventor: Benjamin J. Metcalf

Application No.: 10/019,164

Art Unit: 1645

Filed: December 20, 2001

Examiner: Patricia Ann Duffy

**RECEIVED
CENTRAL FAX CENTER****DEC 19 2005**Title: PRODUCTION OF THE LIPIDATED FORM OF THE PEPTIDOGLYCAN-ASSOCIATED LIPOPROTEINS OF GRAM-NEGATIVE
BACTERIA

12/20/2005 HLE333 00000054 011425 10019164

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Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (571) 272-3282.The above-identified application became abandoned for failure to file a timely and proper reply to a notice or
action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration
date of the period set for reply in the office notice or action plus an extensions of time actually obtained.**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☒ Other than small entity - fee \$ 1,500.00 (37 CFR 1.17(m))**2. Reply and/or fee**A. The reply and/or fee to the above-noted Office action in
the form of Amendment and Declaration (identify type of reply):

- ☒ has been filed previously on July 25, 2005
- ☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____

- ☐ has been paid previously on _____
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the
USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to
complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any
comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer,
U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED
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PTO/SB/64 (10-05)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (II)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

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AddressEnclosures: ☒ Fee Payment☒ Reply (RCE)☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unintentional delay☐ Other: _____**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300._____
Date_____
Signature_____
Typed or printed name of person signing certificate

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DEC 19 2005

Appl. No. : 10/019,164 Confirmation No. 3977
Applicant : Benjamin J. Metcalf
Filed : December 20, 2001
TC/A.U. : 1645
Examiner : Patricia Ann Duffy
Docket No. : ACY33484-00
Customer No. : 25291

December 19, 2005

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT ESTABLISHING UNINTENTIONAL DELAY

Sir:

This statement is in response to the Advisory Action mailed on November 30, 2005 and received by this office on December 12, 2005. Applicant states that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

The Examiner issued the first Office Action in this case on November 25, 2003. Applicant responded by filing an Amendment on February 25, 2004. The Examiner issued a second Office Action, which she made final, on May 13, 2004. Applicant filed a Notice of Appeal on August 6, 2004, but did not file an appeal brief. Rather, Applicant decided to file a Request for Continued Examination (RCE) and an amendment on November 12, 2004. The Examiner entered the amendment and subsequently issued a non-final Office Action on January 25, 2005.

Applicant's initial response to the non-final Office Action was to file a Notice of Appeal on April 12, 2005. Applicant later decided, however, to file an amendment to the

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Statement Dated December 19, 2005
In Response to Advisory Action of November 30, 2005

Office Action and a petition for a three-month extension of time and, therefore, did not file an appeal brief. According to 37 CFR 41.37(b), if the appellant fails to file the appeal brief within two months of filing the Notice of Appeal, the appeal will stand dismissed.

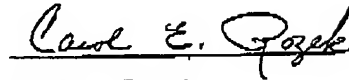
Applicant believed, however, that it was still possible to file an amendment to the Office Action within the statutory period for reply because the Examiner checked off on the Office Action that it was non-final. The first page of the Office Action indicates that a shortened statutory period for reply is set to expire three (3) months from the mailing date of the communication, i.e., April 25, 2005. The Office Action also indicates that extensions of time may be available under 37 CFR 1.136(a), but in no event may a reply be timely filed after six (6) months from the mailing date of the communication. Applicant filed an amendment and petition for a three-month extension of time – which petition was granted – on July 25, 2005.

Applicant was therefore surprised to receive an Advisory Action indicating that the amendment and accompanying declaration filed on July 25, 2005 were not entered because they allegedly failed to place the application in condition for allowance. Furthermore, because Applicant chose to file an amendment rather than pursue the appeal, the Examiner states in the Advisory Action that the present “application stands technically abandoned.”

After discussing the Advisory Action with supervisory patent examiner Lynette Smith on December 16, 2005, and conducting further research into this issue, Applicant learned that once one gets on the appeal track by filing a Notice of Appeal, the only means of getting off is to file either an appeal brief or an RCE. Applicant is therefore filing with this petition an RCE requesting that the amendment and declaration filed on July 25, 2005 be entered.

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Respectfully submitted,



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